

**DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION
POLICY AND PROCEDURES**

NUMBER: WRD-

DRAFT

SUBJECT: PART 353 ACTIVITIES NOT CONSTITUTING A CONTOUR CHANGE OR USE

ISSUE:

To identify activities generally considered to not be a "contour change" or "use" within the meaning of Sections 35301(a) and (i) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), respectively, requiring a permit under Part 353, Sand Dunes Protection, of the NREPA.

AUTHORITY:

Part 353 of the NREPA.

DEFINITIONS:

"Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in Part 637, Sand Dune Mining, of the NREPA.

"Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in Part 637.

POLICY:

Part 353 regulates "contour changes" and "uses" in critical dune areas in recognition of the "significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits" that these areas provide. MCL 324.3502(a). The Legislature has mandated that the "use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured." MCL 324.35302(c). The model zoning plan provided for in Sections 35312 to 35324 of the NREPA identifies further specific regulations in critical dune areas.

In this statutory context, the following activities are considered to generally not significantly alter the physical characteristics of a critical dune or constitute a contour change under Part 353, and therefore do not constitute a "use" requiring a Part 353 permit:

1. Construction using handheld tools of stairways, boardwalks, and/or trams including the entry/exit platforms that are elevated above grade to a height sufficient to allow sand movement, five feet wide or less, have no roof or walls, and will disturb vegetation only within the footprint of the stair/boardwalk/tram system. This does not include the use of wheeled or tracked self propelled tools. Stairways, boardwalks, trams, and decks placed lakeward of the ordinary high water mark of the Great Lakes may require a permit under Part 325, Great Lakes Submerged Lands, of the NREPA.

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2. Removal of trees that are threatening a structure, utility line, or human safety, provided that the trees are removed in such a manner so as to not cause a contour change on the surrounding dune and the stump and root system are left in place, so as to minimize erosion.
3. Installation of a pole or post installed by using handheld tools. Some examples include a flag pole, mailbox, sign, utility pole, light pole, birdhouse, birdfeeder, basketball hoop, and yard art.
4. Replacement of an existing deck, in-place and in-kind, including new or additional posts by using handheld tools.
5. Installation of a fence, but not a retaining wall, utilizing hand held tools, provided:
 - The fence follows the existing grade.
 - Fences lakeward of the crest are constructed to be open to allow wind and sand movement, examples of such types of fences would be split rail or cyclone. Fences placed lakeward of the ordinary high water mark of the Great Lakes may require a permit under Part 325.
 - Soil movement is limited to that necessary to place the fence posts.
6. Placement of a temporary snow or sand fence. Fences placed lakeward of the ordinary high water mark of the Great Lakes may require a permit under Part 325.
7. Planting a native tree or other native vegetation using handheld tools without changing existing grades or contours.
8. Excavation with handheld tools for the purpose of access to an existing residential septic system for pump out of the system.
9. Excavation with handheld tools for the purpose of replacement of existing residential utility lines.
10. Regrading or repairing of a legally existing driveway and/or existing parking or adding additional material such as gravel, concrete, asphalt, or crushed rock to an existing driveway without changing the size of the driveway or contours outside of the driveway footprint.
11. Grading and/or removal of newly wind deposited, unvegetated sand to clear an access to existing structures, driveways, hardened parking areas, roads, and walkways provided excess sand is disposed of in a legal manner.
12. Removal of invasive species utilizing handheld tools.
13. Construction of a separate (detached) structure landward of the crest of 200 square feet or less that does not require a contour change.
14. Replacement of a legal (pertaining to Part 353) existing retaining wall of less than six feet in height, in place with no impacts outside the footprint of the existing wall.

This policy provides guidance to staff regarding the implementation and interpretation of laws administered by the DEQ. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and it does not have the force and effect of law.

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REFERENCE TO DIVISION PROGRAMS:
Sand Dunes Protection and Management

Division function:

Compliance and Enforcement	Administration
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METHOD OF DISTRIBUTION: Intranet, Internet, and staff and/or committee meetings.

APPROVED: _____ DATE: _____
William Creal, Chief
Water Resources Division